03. 03.01.2019 Heard learned counsel for the parties.

By way of this writ petition, the petitioner has challenged the order dated 17.04.2003 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.454 of 1997 whereby the learned Tribunal has rejected the claim of the petitioner.

On perusal of the impugned order, it appears that the learned Tribunal considering the case of the petitioner has observed at paragraphs-5, 6 and 7 as follows:

> "5. We have heard the learned counsels for both the sides and perused the materials available on record. Respondents have raised the question of limitation by stating that the cause of action having been arisen in the year 1971-72 and this Original Application having been filed 25 years after, i.e. in the year 1997, the same is liable to be dismissed on the ground of limitation alone. They have laid stress on the point that the applicants at the time of their registration as substitutes, as claimed by them, were in the age group of 10-16 years. The applicants being minor on the date of purported application were not sue juris and as such not entitled for registration as substitutes. They have formally denied that the applicants were ever registered as substitutes in 1971-72. The Respondents have also denied the existence of any document like the one submitted by the applicants under Annexure-A/1. They have further pointed out that the case of the applicants is contradictory, because, while they are claiming to have been registered substitutes, in the prayer they have asked for engagement against day to day casualties/vacancies. They have also averred that even if the applicants were ever engaged as substitutes, the very fact that they do not claim any engagement between the period 1980-81 and 1997 make them ineligible for being considered for engagement as substitutes in

terms of Establishment Sl. No.244/84 (under the Heading Screening) which stipulates as follows:

> "If a casual labour who was earlier discharged from service on completion of work or for want of further productive work has not worked on the Railways again in the preceding two calendar years his name should be struck off from the casual labour register".

The Respondents have also denied the allegation that any person viz. Chandra Sekhar Barik, T.N. Pradhan and Nakul Bari were ever working as substitutes under Chief D.T.I., Khurda. Repudiating the chart showing stations of engagement of the applicants, the Respondents have stated that the same cannot be dependent upon, because, it does not disclose the length of engagement and/or days' of engagement of the applicants, thus making it difficult for verification. The Respondents have, by filing a reply, denied that the certificates of enrolment of the applicants during the same period between 1977-1981 are authentic being not accompanied with engagement letters enrolling the applicants as substitutes issued by the Divisional Personnel Officer and that on verification of records no such engagement letters were found to have been issued by the Sr. Divisional Personnel Officer. The Respondents have further stated that the substitute register maintained by the Khurda Road Division shows that the applicants were never engaged as substitutes nor were they paid any wages nor their names were taken forward in the substitute register, that after 10.10.1979, the engagement of substitutes was done at the Division level with the approval of General Manager etc. For the engagement done prior to that date by the Division only wages were paid through station pay order, signed by the divisional authority and therefore, the Respondents submitted that had the applicants been engaged as substitutes their names should have been reflected in the substitute register.

6. The issue which needs to be resolved here is to determine whether the applicants are entitled to relief that they have claimed and as to whether they were registered as substitutes by the Respondents during the year 1977. The story of the applicants is that they were registered during the year 1971-72, but were given engagement during the period 1977-81. Although to prove their point the applicants have relied on the strength of the letter of the Respondents at Annexure-A/1 as well as certificates of engagement under Annexure-A/4, the Respondents have repudiated the authenticity of both these documents. With regard to Annexure-A/1, they have denied the existence of any office file bearing Index No."P-3/1-A". Further they have stated that even for the argument's sake this letter did exist, it could not have helped the applicants for registering themselves as substitutes, because the letter contained an instruction that the Selection Board could appoint a candidate provided he was in the age limit between 18 & 25 years. As the applicants, during the year 1971-72 are found to be within age group of 10-16 years, they could not have been registered as substitutes. As regards Annexure-A/4 the Respondents have disputed the authenticity of this document for the reason they have explained in the counter.

7. A few questions arose out of this application which have not been answered satisfactorily by the applicants, i.e., whether the Respondents could have registered some workers 7 to 8 years earlier for engagement and whether administratively it was feasible to maintain such lists for years together and if the applicants were actually engaged as substitutes sometimes in 1977, 1978, 1980 and 1981, according to their own admission why they are not engaged till 1997, when they approached this Tribunal in the present O.A. They had for inexplicable reasons remained dormant all these years. As a result having not been engaged for so many years they could not have retained their status as substitutes in terms of Estt. Sl.

> No.244/84 dated 12.12.1984. Thus this point remains uncontrovertible. And having remained silent for so many years they are liable to lose their right to agitate the matter. It has been brought to our notice by the Respondents that similar issue came up before this Tribunal in O.A. No.321/98. In that case, applicants (15 in number) claimed to have worked as substitutes on different dates in 1978 at Gurudijhatia Railway Station and produced certificates of engagement from the Station Master. Thereafter neither they were engaged nor did they agitate. The Tribunal found that the period of engagement during 1978-79 was 3 to 20 days, but they approached the Tribunal 21 years after the last engagement under the Railways. The applicants could not clarify as to why they had remained silent for the last 21 years. Neither they had indicated if they had ever preferred any representation to the departmental authorities during the intervening period praying that they should be reengaged. Having regard to these facts of the case, the Tribunal held that the applicants were not entitled to get engagement under the Respondents."

In view of the finding of the learned Tribunal regarding authenticity of the documents which are found to be not genuine and that the petitioner was not fulfilling even the eligibility criteria for recruitment, we see no reason to interfere with the impugned order.

Learned counsel for the petitioner verily relied upon the order passed by learned Single Bench of the Tribunal as at Annexure-6 contending that similarly placed persons like that of the petitioner were absorbed in regular establishment in Gr-D posts. We are unable to accept the contention simply for the reason that since the order passed under Annexure-6 was of Single Bench, the same loses its significance in view of the impugned order passed

by Division Bench. Another judgment of the Division Bench of the Tribunal in O.A. No. 476 of 1990, which was relied upon during course of argument, is not relevant for the issue raised in this writ petition. Thus, the impugned order deserves no interference.

Accordingly, the writ petition deserves to be dismissed and the same is dismissed.

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(K.S. Jhaveri)
Chief Justice

bks/jm

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(*K. R. Mohapatra)*
Judge